THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.14003 of 1992

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Dated 23-02-2006

Between:

Major M.L.Shanbhag & others.

..... PETITIONER

AND

Union of India, rep. by its Secretary, Department of Science & Technology, Technology Bhavan, New Mehranli Road, New Delhi & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.14003 of 1992

O R D E R:

The relief sought for in this writ petition is to revise the seniority list between the petitioners and respondents 3 to 30 by showing the petitioners as seniors to the respondents in the list of officers of the Survey of India.

The very basis for this claim is the circular of 1953. Petitioners would contend that para 7 of the said circular, which provides that Civilian Grade II Officers shall be placed immediately below the last directly recruited Civilian Officers, has no application in the matter of fixation of seniority of the respondents vis-a-vis the

petitioners herein inasmuch as the petitioners are Army officers and their seniority ought to be fixed in the year of allotment in accordance with the procedure prescribed under para 8 of the circular dated 16-12-1953.

Sri R.Mahendra, learned counsel for the petitioners, would refer to Survey of India (Group-A post) Service Rules, 1989, to submit that the earlier recruitment rules of 1960 have been superseded. Learned counsel would refer to Annexure 1 of the rules whereat para 3 relates to safeguards for existing incumbents in the combined seniority list:

The present incumbents (Defence/Civil), who are adversely affected on account of bifurcation will be protected by the following provisions:

a. All those officers (Defence/Civil), who would have got promotion on the basis of the integrated seniority but who get left out on account of separate seniority, would be covered by creating supernumerary posts (and in addition by granting equivalent acting/substantive army ranks in case of Defence officers).

b. There is no wide disparity between the existing officers in the two streams for promotion to a particular level i.e. the difference in the year of allotment/seniority of the junior-most, officers or comparison at each level is not more than one year. However, if there is any case of wide disparity, the affected officer(s) would be covered by creating supernumerary posts (and in addition by granting equivalent acting/substantive army ranks in case of Defence officers).

c. Other affected Defence officer(s) who get superseded by junior civilian officers in the combined list but are otherwise fit for promotion-not covered under (a) & (b) above-will be granted local rank equivalent to the post occupied by junior civilian officer. This would not entitle them to any rank pay or other allowances of supernumerary local rank.

Learned counsel for the petitioners would contend that under para 3(c), petitioners, who are defence officers, are entitled to be granted the local rank equivalent to the post occupied by the junior civilian officers and that the respondents are required to consider the cases of the petitioners in accordance with the prescription.

Sri A.Sanjeev Kumar, learned Standing counsel for Survey of India, would submit that this circular has been subsequently superseded by the 1960 and 1962 rules. Learned Standing counsel would draw attention of this Court to the fact that the petitioners had submitted a representation in the year 1987 itself questioning the publication of the seniority list and their seniority vis-à-vis the respondents herein. Learned counsel would contend that since the representation of the petitioners had been rejected as early as in 1988 and inasmuch as the petitioners have not sought for their cases being considered in accordance with
para 3(c) of the 1989 Rules, the relief now sought for by
Sri R.Mahendra, learned counsel for the petitioners, across the bar, ought not to be acceded to.

While this submission of Sri A.Sanjeev Kumar, Learned Standing counsel, cannot be said to be without merit, inasmuch as the relief sought for in the writ petition is not based on the 1989 Rules,
I do not propose to disentitle the petitioners from submitting their representation to respondents 1 and 2 seeking implementation of para 3(c) of the 1989 Rules. Sri R.Mahendra, learned counsel for the petitioners, would submit that the petitioners shall file a detailed representation within four weeks from the date of receipt of a copy of this order and would seek a direction from this Court to the respondents to consider the petitioners' representation favourably. I do not propose to issue a mandamus in this regard. I have no manner of doubt that if such a representation is filed by the petitioners, respondents 1 and 2 would consider the same and pass appropriate orders in accordance with law.

The writ petition is accordingly disposed of. There shall however be no order as to costs.

23-02-2006

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